

# National Conference of State Legislatures

## LEGISBRIEF

BRIEFING PAPERS ON THE IMPORTANT ISSUES OF THE DAY

FEBRUARY 2010

VOL. 18, No. 10

### A Rough Road to REAL ID

*By Molly Ramsdell*

*State-issued driver's licenses remain valid.*

*Requirements include retaining a picture of every applicant for a card.*

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09/02/2014**

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*States must meet all REAL ID requirements by May 11, 2011.*

The new year has come and gone, and residents in the nation's 50 states, its territories and commonwealths still can use their state-issued driver's licenses and identification cards to board commercial aircraft, enter nuclear power plants and gain access to federal buildings. This is despite the fact that the federal REAL ID Act of 2005 and its implementing regulations required state-issued driver's licenses and identification cards to meet certain federal standards by Dec. 31, 2009. On Dec. 18, 2009, Department of Homeland Security Secretary Janet Napolitano reported that, since at least 46 of the 56 U.S. licensing jurisdictions would not meet the Dec. 31, 2009, "material compliance" deadline, it would be waived.

With material compliance, a state would have met 18 interim benchmarks ([www.ncsl.org/documents/standcomm/sctran/InterimBenchmarks.pdf](http://www.ncsl.org/documents/standcomm/sctran/InterimBenchmarks.pdf)) defined as part of the act's implementing regulations. These included retaining a picture of every applicant (not only recipients); verifying each applicant's Social Security number (using Social Security Online Verification—SSOLV) and lawful status in the United States (using Systematic Alien Verification for Entitlements—SAVE); ensuring the card has certain security features; conducting name- and fingerprint-based criminal history and employment eligibility checks for certain employees of the motor vehicle agencies; and using a DHS-approved security marking on materially compliant cards.

States now must meet all requirements of REAL ID by May 11, 2011. Requirements include:

- Complying with the 18 benchmarks;
- Completing a certification process;
- Electronically verifying the validity of other identity documents beyond Social Security number and proof of lawful status, e.g., birth certificates (using the Electronic Verification of Vital Events System—EVVE), U.S. passports and authenticity of REAL ID-compliant cards issued by other states; and
- Reissuing all existing driver's licenses and identification cards by Dec. 1, 2017.

#### The Road to REAL ID Implementation

- Dec. 1, 2017 – All existing licenses must be reissued to be REAL ID-compliant.
- May 11, 2011 – The 56 U.S. licensing jurisdictions must fully comply.
- Dec. 18, 2009 – Dec. 31, 2009, deadline waived.
- Dec. 1, 2009 – Deadline to apply for second extension. To receive the extension, licensing jurisdictions were to be in material compliance by Dec. 31, 2009.
- May 11, 2008 – State-issued DL/IDs not meeting certain federal requirements were not to be accepted for federal purposes (as defined in the act and regulations). On March 31, 2008, all 56 licensing jurisdictions were issued an extension.
- March 31, 2008 – A state could file for an initial extension to Dec. 31, 2009. (All states were issued an extension.)
- Jan. 29, 2008 – Final regulations issued that established a new timeline for compliance.
- May 11, 2005 – REAL ID Act enacted.

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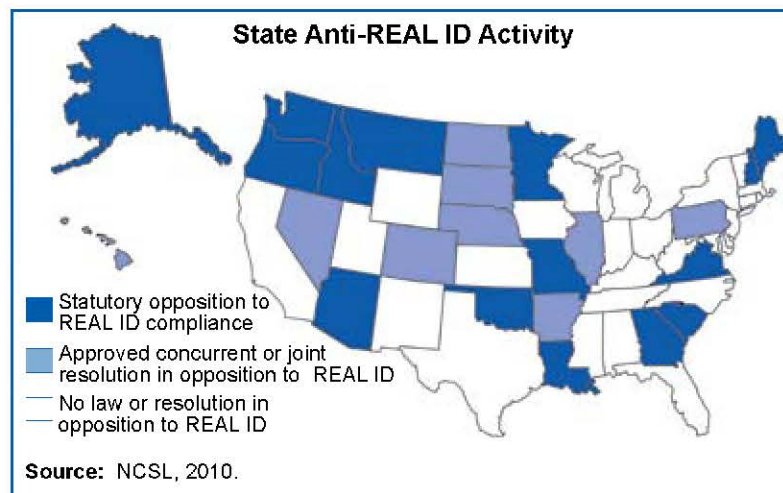
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### State Action

State efforts to secure driver's licenses and identification cards began well before the Sept. 11, 2001, terrorist attacks and have continued in the wake of REAL ID. Many state lawmakers, however, have responded directly to the REAL ID Act itself. Since the act was passed in 2005, legislators in 50 states and the District of Columbia have proposed more than 200 related bills. Despite DHS appeals to states, most state REAL ID measures have contested the act. Since 2005, lawmakers in 42 states have considered legislation that either asserted the state's opposition to REAL ID or urged Congress to amend or repeal the act. As of Dec. 31, 2009, anti-REAL ID measures had passed in both chambers of at least 24 states (including unicameral Nebraska). Alaska, Arizona, Georgia, Idaho, Louisiana, Maine, Minnesota, Missouri, Montana, New Hampshire, Oklahoma, Oregon, South Carolina, Virginia and Washington have statutory opposition to REAL ID compliance.



*State responses to the REAL ID Act vary.*

Not all responses to the REAL ID Act have been negative. Since 2005, legislators in several states have proposed measures that would bring the state closer to compliance. Lawmakers in at least nine states—Florida, Indiana, Maryland, Michigan, Nevada, Ohio, Tennessee, Utah and Wisconsin—have passed laws moving them toward REAL ID compliance.

**Federal Action** Legislation introduced in both the U.S. House and Senate would make changes to REAL ID. The *REAL ID Repeal and Identification Security Enhancement Act of 2009* (H.R. 3471) would replace it with a negotiated rulemaking process to allow stakeholders, including legislators, a greater role in the rulemaking process. The process, originally established as part of legislation implementing the 9/11 committee recommendations to create federal standards for state-issued driver's licenses and identification cards, was under way in 2005 when REAL ID was enacted. H.R. 3471 was referred to the House Committee on Oversight and Government Reform and the Committee on the Judiciary; no further action has occurred.

*Federal legislation under consideration would change REAL ID.*

*Providing for Additional Security in States' Identification Act of 2009* (the PASS ID Act, S. 1261) would repeal REAL ID and attempts to address some state concerns with the act, including providing states some relief from requirements to electronically verify an applicant's identity documents. S. 1261 would create a demonstration program for the state-to-state verification system and would not require verification of birth certificates until six years after final regulations are issued and an adequate system is in place. It also would prohibit the federal government from charging states a fee to use SAVE, SSOLV and any other federal electronic system in connection with issuing driver's licenses or identification cards in accordance with the PASS ID Act. In July 2009, the legislation passed unanimously from the Senate Homeland Security and Government Affairs Committee; it is not yet scheduled for floor debate.

### Contacts for More Information

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NCSL database of state REAL ID legislation and other REAL ID resources: [www.ncsl.org/realid](http://www.ncsl.org/realid).